

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Muhammad Kamil and others v. Musammat Imtiaz Fatima ; and of Muhammad Kamil and others v. Musammat Imtiaz Fatima and others ; and of Musammat Imtiaz Fatima v. Muhammad Kamil and others, from the Court of the Judicial Commissioner of Oudh ; delivered the 30th July, 1909.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD ATKINSON.

SIR ANDREW SCOBLE.

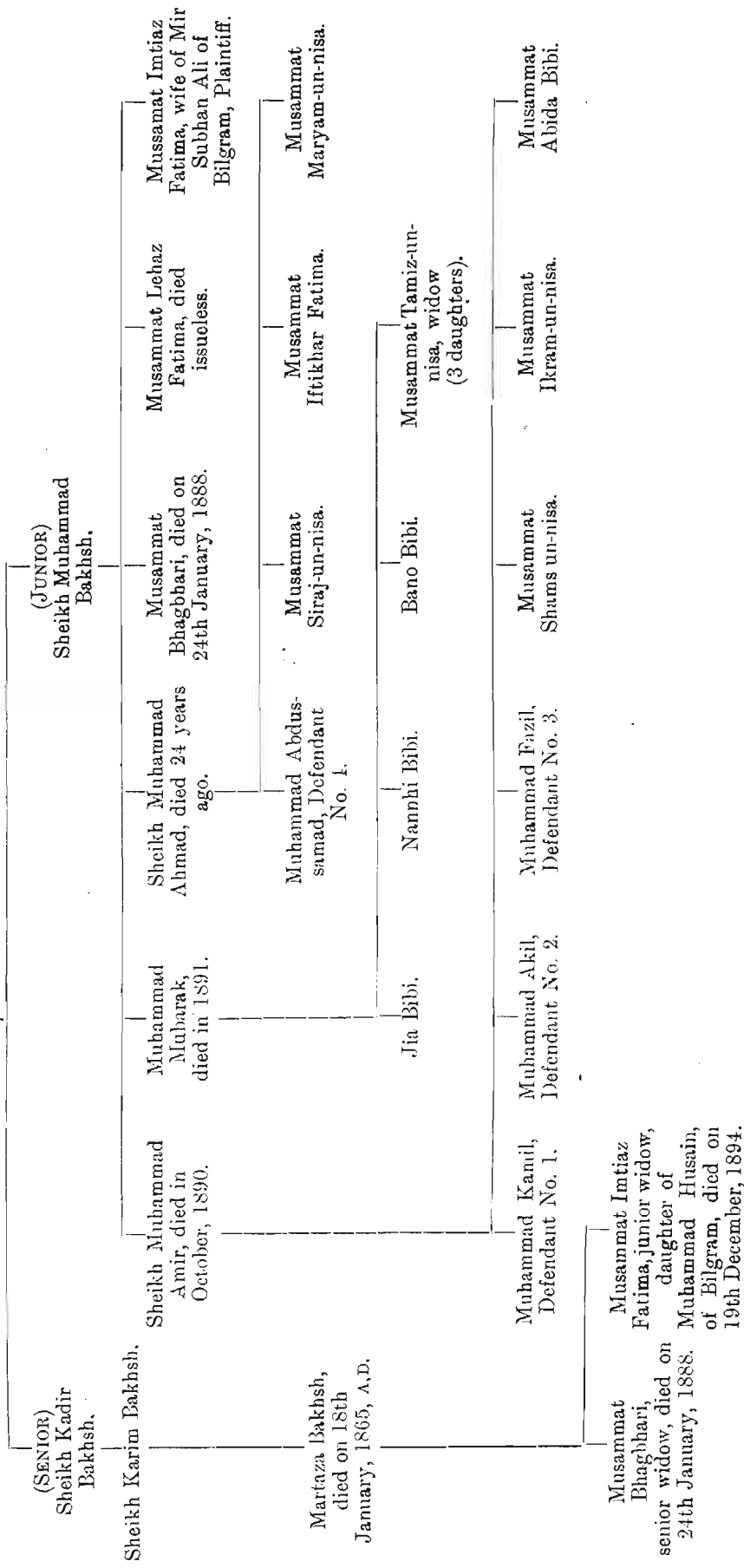
SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

These are three consolidated Appeals from decrees of the Court of the Judicial Commissioner of Oudh, dated the 7th of September 1904, and the 19th of January 1905, modifying or reversing those of the Subordinate Judge of Hardoi. These decrees arise out of two suits, and the suits in question will become intelligible from the following pedigree :—

[39] P.C.J. 112 L. & M.—125—14/7/09. Wt. 98.

SHEIKH MUHAMMAD BASAWAN.



From that pedigree it will be seen that the name of Musammat Bhagbhari occurs twice, first in the position which she occupied by birth, and, secondly, as the senior widow of Martaza Bakhsh. She had, amongst others, a brother Mubarak and a sister Imtiaz Fatima, Plaintiff in the two suits, and the principal Respondent in the first two of these Appeals. Another Imtiaz Fatima was the junior widow of Martaza Bakhsh, co-widow therefore with Bhagbhari. This Imtiaz Fatima is called in the Courts below No. 1. Martaza Bakhsh died in January, 1865, Bhagbhari, his senior widow, on the 24th January, 1888, Imtiaz Fatima No. 1, the junior widow, on the 19th December, 1894, and Mubarak in 1891.

Martaza died possessed of property which passed first to his mother, and after her death, to his two widows, of whom each held an eight anna share. After the death of Bhagbhari, her co-widow, Imtiaz Fatima, No. 1, retained possession of the whole estate until her death. On her death mutation of names was made in favour of the Principal Appellants in respect of a twelve anna share, and in favour of Abdussamad for the remaining four annas. The position of Abdussamad appears from the pedigree, as does that of the Principal Appellants.

The first of the present suits was instituted on the 31st of October, 1899. It related to a share in the 8 anna share of Martaza's estate which had been held by his senior widow Bhagbhari. The judgment of the first Court in this case decided that the rights of the parties were governed by the Mahomedan law, and not by family custom, as had been alleged, and this was affirmed on appeal. The existence of such a custom is a question of fact, and as to this question the Courts in India concurred in their judgment.

On this point therefore their Lordships see no reason why they should not follow their usual practice of accepting concurrent findings of fact.

The second of the suits now in question was instituted on the 11th of February 1903 in the same Court as the first suit. The dispute related to the estate of Muhammad Mubarak, who died on the 7th of February 1891, including in that estate a share of the estate which had been that of Martaza Bakhsh and which Mubarak was said to have inherited from Bhagbhari, and also property which he took by inheritance from his father.

With regard to the property taken by Mubarak from Bhagbhari a question was raised which does not apply to the estate which he took from his father—the question of limitation. As to this question of limitation, their Lordships are of opinion that it was properly dealt with in the Courts below, and that the time began to run, at soonest, from the death of Imtiaz Fatima, the co-widow of Bhagbhari, and not from any earlier period.

Another question raised was whether the now Plaintiff, Imtiaz Fatima, had relinquished her claim, or was estopped from pressing it. Their Lordships are of opinion that the question has been rightly and satisfactorily dealt with by the Judicial Commissioners. It lay upon those who alleged such relinquishment or estoppel to establish their case, and their Lordships agree in thinking that they have failed to do so.

There remains one question, namely, what shares did the Plaintiff, Imtiaz Fatima, take in property inherited by Mubarak from Bhagbhari, and that inherited by him from his father, respectively? Upon this point their Lordships see no reason to dissent from the view taken by the Judicial Commissioners, or from the reasons given in support of that view.

This disposes of the questions raised upon these Appeals. The result is that their Lordships will humbly advise His Majesty that all the Appeals should be dismissed.

The Appellants in the first two Appeals will pay to Intiaz Fatima (who alone appeared in those Appeals) her costs of the Appeals, and Intiaz Fatima will pay the Respondents' costs of her Cross-Appeal, and these costs will be set off against one another in the usual way.

